

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

103 CMR 486.00: ATTORNEY ACCESS AT MASSACHUSETTS CORRECTIONAL INSTITUTIONS

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486.01 Purpose

103 CMR 486.00 is designed to facilitate inmate access to the courts and to legal counsel. The regulations set forth standards for the minimum access to inmates to be afforded to attorneys, law students, and paralegals and shall not be construed to prohibit the Superintendent of any state correctional facility from granting additional access under appropriate circumstances.

486.02 Cancellation

103 CMR 486.00 cancels all previous departmental or institutional policy statements, rules or regulations relating to access of attorneys or their assistants to inmates to the extent they are inconsistent with this policy.

486.03 Applicability

103 CMR 486.00 is applicable to all Massachusetts Correctional Institutions except the Treatment Center at MCI-Bridgewater.

486.04 Statutory Authorization

103 CMR 486.00 is issued pursuant to M.G.L. c. 124, s.1(q) and M.G.L. c. 127, s.36A.

486.05 Definitions

Attorneys - Any member of the bar of Massachusetts or any other jurisdiction, state or federal, who is in good standing, and who represents or seeks to represent a client who is an inmate at a Massachusetts Correctional Institution.

Law Student - Any person enrolled in an accredited law school.

Paralegal - Any person who works on legal and related matters under the authorization and supervision of an attorney as defined above.

Inmates Housed Apart from the General Population - Any inmate in administrative separate confinement or segregation as a result of departmental classification or hospital confinement.

486.06 General Requirements

(1) An attorney shall be entitled to access as provided for 103 CMR 486.00 for the purpose of establishing or furthering an attorney-client relationship or for the purpose of interviewing a witness for pending or potential litigation or an administrative hearing in which the attorney represents a party, in each case if the inmate whom he wishes to visit agrees to such a visit. An attorney may be required to identify the purpose of a visit as conforming to the specifications of the foregoing sentence but shall not be required to disclose the purpose of a visit or the nature of his business in any greater detail.

(2) A law student shall be entitled to access as provided in 103 CMR 486.00 for the purposes specified in 103 CMR 486.06(1) above if he is working under the authorization and supervision of an attorney, provided, (a) that said law student has at least one (1) week prior to his first intended visit to an institution, supplied to the institution a letter signed by a dean of his law school which identifies him as a student enrolled at that law school and

(b) the dean or member of his staff has confirmed the letter when telephoned by an employee of the institution.

(3) A paralegal shall be entitled to access as provided in 103 CMR 486.00 for the purposes specified in 103 CMR 486.06(1) above if he is working under the authorization and supervision of an attorney, provided, that said paralegal has

(a) at least one (1) week prior to his first intended visit to an institution, supplied to the institution, and

(b) the attorney or a member of his staff has confirmed the letter when telephoned by an employee of the institution; and

(c) no language in this section shall be interpreted to permit representation of an inmate by a paralegal at a Department of Correction disciplinary or classification hearing.

486.07 Identification and Security Requirements

(1) Upon entry into an institution, an attorney shall be required to present a bar membership card and one other piece of identification with a photograph on it if requested to do so by institution personnel. No other identification shall be required.

(2) Upon entry into an institution, a law student or a paralegal shall be required to present identification if requested to do so by institutional personnel. That identification shall include one piece of identification with a photograph on it and a letter of introduction from his supervising attorney. The letter of introduction shall include the full name and address of the law student or paralegal, the supervising attorney's business name, address and telephone number, and the name of the inmate or inmates the law student or paralegal is authorized to interview. No other identification shall be required.

(3) Attorneys, law students and paralegals shall be subject to all departmental regulations and institutional policies governing visitors, not directly in conflict with these regulations.

(4) All attorneys entering an institution shall be subject to search. Such a search shall initially consist of passing through a fixed metal detector or hand-held scanner depending upon which is in use by the particular institution. If the attorney successfully passes through the metal detector or hand-held scanner, he shall be allowed to enter the institution without further search.

(5) Should an attorney fail to pass through a fixed metal detector successfully, he shall be subject to search by a hand-held scanner. If the attorney successfully passes this search, he shall be allowed to enter the institution without further search.

(6) Should either an initial hand scanner search performed under section 486.07(4), or a secondary hand scanner search performed under section 486.07(5), indicate the presence of an unexplained metal object on the attorney's person, the attorney shall satisfy the staff person conducting the search as to the cause of the interference. If this requires more than the removal of external clothing or accessories, the attorney shall be afforded the opportunity to consent in writing to a pat down or further search, or to leave the institution. If the attorney consents to a pat down or further search, such consent shall be recorded by his signing a log book kept for that purpose.

(7) Notwithstanding the provision of 103 CMR 486.07(4)-(6) above, whenever a correctional officer has a particularized suspicion that an attorney is carrying contraband on his person, the attorney shall be subject to a pat down or further search, consented to in writing, prior to being allowed into the institution. The attorney shall be afforded the opportunity to leave the institution rather than consent to a pat down or further search.

(8) Before any pat down or further search of an attorney is performed, a correctional officer shall relay to his shift commander his reasons for requesting the search. Pat down or further searches may take place only with the approval of the shift commander or such other person as the superintendent may designate.

(9) The officer conducting any pat down or further search of an attorney shall file an incident report concerning the search with the superintendent prior to the end of the officer's shift. The report shall contain the name of the attorney searched; the name of the searching officer and of the shift commander or superintendent's designee who approved the search; the extent of the search; what, if anything, was found; and any subsequent action taken based on the results of the search.

(10) Where institutional staff have probable cause to believe that a crime has been or is being committed by an attorney on the grounds of an institution, arrest and prosecution of the suspected offender may be initiated pursuant to usual criminal procedure.

(11) Whenever an attorney is refused permission to enter an institution, the Commissioner and/or the General Counsel shall be notified of such action by the institution Superintendent or his designee within twenty-four (24) hours of the incident.

486.08 Requirements for Visiting Inmates; Delays

(1) Requirements for Visiting Inmates Housed in the General Population.

(a) Attorneys shall be permitted to visit inmates housed in the general population during institutional visiting hours for inmates and upon one hour notice at any other time between the hours of 9:00 A.M. and 8:30 P.M.

(b) Law students and paralegals shall be permitted to visit inmates housed in the general population during institutional visiting hours for those inmates.

(2) Requirements for Visiting Inmates Housed Apart from the General Population.

(a) Attorneys shall be permitted to visit inmates housed apart from the general population between 9:00 A.M. and 8:30 P.M. and during other institutional visiting hours for those inmates.

(b) Law students and paralegals shall be permitted to visit inmates housed apart from the general population during institutional visiting hours for those inmates.

(c) Attorneys, law students and paralegals who wish to visit an inmate housed apart from the general population, should normally give the institution advance notice at least one day prior to the proposed visit but every effort should be made to accommodate such visits where prior notification was not practicable.

(3) Requirements for Visit with More Than One Inmate.

An attorney, law student, or paralegal who intends to visit more than one inmate simultaneously shall request permission from the superintendent twenty-four (24) hours in advance of such visit. Approval shall not be unreasonably withheld.

(4) Delays.

Where a delay occurs, the attorney, law student, or paralegal affected shall be promptly informed of the cause of the delay and the expected duration of the delay.

(5) In emergency situations and upon twenty-four (24) hours notice the Superintendent may grant extended visitation hours.

486.09 Legal Papers and Materials

(1) Attorneys, law students, and paralegals shall be permitted to carry papers and writing materials into the attorney-inmate interview area. Said papers and materials shall be subject to inspection for contraband by institutional personnel but shall not be read or copied.

(2) Attorneys, law students, or paralegals shall be permitted to leave papers or documents with inmates. Papers or document given to an attorney, law student or a paralegal by an inmate shall be subject to inspection for contraband by institutional personnel following the visit but shall not be read or copied.

(4) Attorneys, law students, and paralegals shall be permitted to carry cameras, tape recorders and tapes into the attorney-inmate interview area for use during an interview. All such recording equipment shall be subject to inspection for contraband by institutional personnel. Attorneys, law students, and paralegals shall take tapes used during inmate interviews out of the institution with them.

486.10 Emergencies

(1) When an emergency exists within an institution, the superintendent or his designee may temporarily terminate visits by attorneys, law students, and paralegals.

(2) When visits are temporarily terminated, in accordance with 103 CMR 486.10(1) above, attorneys, law students, and paralegals shall be informed as soon as possible of the nature and expected duration of the emergency.

486.11 Review Date

This policy shall be reviewed at least annually from the effective date by the Commissioner or his designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions, or deletions.

486.12 Severability Clause

If any article, section, subsection, sentence, clause or phrase of these regulations is for any reason held by a court of competent jurisdiction to be unconstitutional, contrary to statute, in

excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of this policy.

REGULATORY AUTHORITY

103 CMR 486.00: M.G.L. c. 124, §1(q); M.G.L. c. 127, §36A.